IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928

Crl.Rev.Pet.No. 523 of 2007(A)

CMP.332/07 OF J.F.C.M.-III, KOZHIKODE

REVN. PETITIONER: 1ST RESPONDENT.

E.JAMALUDHEEN, S/O.IBRAHIM KUTY,
RTD A.E.O., F.S., COTAGE,
BADARIYA NAGAR, KUMBLA P.O.,
KASARAGOD DISTRICT.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS/PETITIONERS & STATE:
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1. HUSSAIFA, D/O.MUHAMMEDALI,
MODIYIL HOUSE, POONTHALA AMSOM,
KAKKADA DESOM, ALAPPUZHA TALUK.

2. SOUFEER, RESIDING AT
---DO--.

3. STATE OF KERALA REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.
ERNAKULAM.

BY PUBLIC PROSECUTOR SHRI AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 22/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

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CRL. R.P. NO. 523 OF 1997

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Dated this the 4th day of June 2007

O R D E R

The revision petitioner stands convicted for the offence under Section 304(A) r/w Section 34 of the Indian Penal Code and sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.2,000/- and in default to undergo simple imprisonment for two months.

2. The prosecution case is that on 22.01.1991 at about 5.30 p.m. when the victim tried to board the bus the accused/revision petitioner, who was the conductor, rang the double bell and the 2nd accused the driver(who was acquitted) started and moved the bus ahead as a result of which the victim fell down on road and the rear wheel of the bus ran over him and he succumbed to the injuries. The evidence adduced in the matter consisted of the testimony of PWs 1 to 13, Exts. P1 to P10. The direct evidence in the matter consisted of the testimony of PWs 1 to 3 who were the passengers in the bus. PW1, one of the passengers stated that when the deceased Nadarajan tried to get into the bus and placed his foot on the foot board the conductor rang the double bell and Nadarajan fell down the road. Of course, he

was treated as hostile at the instance of the prosecution as he stated that he could not testify as to whose fault the incident has taken place. PW2 has not supported the prosecution version. PW3 has supported the prosecution version as such. Nothing has been brought out in the cross examination of PW3 to discredit his evidence. No contradiction with his previous statement has been marked. It also stands established from the evidence of the Motor Vehicle Inspector and inspection report that there was no mechanical defect to the vehicle. The death on account of the motor accident is proved from the deposition of PW12, the doctor who issued Ext.P4, inquest report. On a consideration of the evidence adduced in the matter, I find that the courts below have found that the accused is guilty of the offences on sound reasons. I find no grounds to interfere in the above findings in exercise of the revisional jurisdiction. In the circumstances, the conviction is confirmed.

3. The counsel for the revision petitioner has pleaded for leniency pointing out that the incident has taken place in the year 1991 and that the accused has already retired from service and that he is aged. In the circumstances and considering the long delay and the fact that the accused was facing the criminal proceedings so far,

the sentence imposed for the offence under Section 304 (A) is modified to imprisonment till the rising of the court and to pay a compensation of Rs.50,000/- to the legal representatives of the deceased. The revision petitioner is granted three months time from today onwards to remit the compensation amount. The revision petitioner shall appear before Judicial First Class Magistrate, Kayamkulam on **05.09.2007** to receive sentence.

The Crl.R.P is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

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